

114TH CONGRESS  
1ST SESSION

# H. R. 1557

To amend the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 to strengthen Federal antidiscrimination laws enforced by the Equal Employment Opportunity Commission and expand accountability within the Federal government, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 2015

Mr. CUMMINGS (for himself and Ms. NORTON) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

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## A BILL

To amend the Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 to strengthen Federal antidiscrimination laws enforced by the Equal Employment Opportunity Commission and expand accountability within the Federal government, and for other purposes.

1       *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Federal Employee  
5 Antidiscrimination Act of 2015”.

1   **SEC. 2. SENSE OF CONGRESS.**

2       Section 102 of the Notification and Federal Em-  
3       ployee Antidiscrimination and Retaliation Act of 2002 (5  
4       U.S.C. 2301 note) is amended—

5               (1) in paragraph (4), to read as follows:

6               “(4) accountability in the enforcement of Fed-  
7       ereral employee rights is furthered when Federal agen-  
8       cies take appropriate disciplinary action against  
9       Federal employees who have been found to have  
10      committed discriminatory or retaliatory acts;”; and

11               (2) in paragraph (5)(A)—

12               (A) by striking “nor is accountability” and  
13      inserting “but accountability is not”; and

14               (B) by inserting “for what by law the  
15      agency is responsible” after “under this Act”.

16   **SEC. 3. NOTIFICATION OF VIOLATION.**

17       Section 202 of the Notification and Federal Em-  
18       ployee Antidiscrimination and Retaliation Act of 2002 (5  
19       U.S.C. 2301 note) is amended by adding at the end the  
20      following:

21               “(d) NOTIFICATION OF FINAL AGENCY ACTION.—

22               “(1) Not later than 30 days after a Federal  
23       agency takes final action or the Equal Employment  
24       Opportunity Commission issues an appellate decision  
25       involving a finding of discrimination or retaliation  
26       prohibited by a provision of law covered by para-

1 graphs (1) or (2) of section 201(a), as applicable,  
2 the head of the agency subject to the finding shall  
3 provide notice for at least 1 year on the agency's  
4 Internet Web site in a clear and prominent location  
5 linked directly from the agency's Internet home page  
6 stating that a finding of discrimination or retaliation  
7 has been made.

8       “(2) The notification shall identify the date the  
9 finding was made, the date or dates on which the  
10 discriminatory or retaliatory act or acts occurred,  
11 and the law or laws violated by the discriminatory  
12 or retaliatory act or acts. The notification shall also  
13 advise Federal employees of the rights and protec-  
14 tions available under the respective provisions of law  
15 covered by paragraphs (1) or (2) of section 201(a).”.

16 **SEC. 4. REPORTING REQUIREMENTS.**

17       (a) ELECTRONIC FORMAT REQUIREMENT.—

18           (1) IN GENERAL.—Section 203(a) of the Notifi-  
19 cation and Federal Employee Antidiscrimination and  
20 Retaliation Act of 2002 (5 U.S.C. 2301 note) is  
21 amended by inserting “(in an electronic format pre-  
22 scribed by the Office of Personnel Management)”  
23 after “an annual report”.

1                             (2) EFFECTIVE DATE.—The amendment made  
2       by paragraph (1) shall take effect on the date that  
3       is 1 year after the date of enactment of this Act.

4                             (3) TRANSITION PERIOD.—Notwithstanding the  
5       requirements of section 203(a) of the Notification  
6       and Federal Employee Antidiscrimination and Retal-  
7       iation Act of 2002 (5 U.S.C. 2301 note), the report  
8       required under such section may be submitted in an  
9       electronic format, as prescribed by the Office of Per-  
10      sonnel Management, during the period beginning on  
11      the date of enactment of this Act and ending on the  
12      effective date in paragraph (2).

13                             (b) REPORTING REQUIREMENT FOR DISCIPLINARY  
14      ACTION.—Section 203 of such Act is amended by adding  
15      at the end the following:

16                             “(c) DISCIPLINARY ACTION REPORT.—Not later  
17      than 60 days after the date on which a Federal agency  
18      takes final action or an agency receives an appellate deci-  
19      sion issued by the Equal Employment Opportunity Com-  
20      mission involving a finding of discrimination or retaliation  
21      in violation of a provision of law covered by paragraphs  
22      (1) or (2) of section 201(a), as applicable, the employing  
23      Federal agency shall submit to the Commission a report  
24      stating whether disciplinary action has been initiated  
25      against a Federal employee as a result of the violation.”.

1   **SEC. 5. DATA TO BE POSTED BY EMPLOYING FEDERAL**  
2                   **AGENCIES.**

3       Section 301(b) of the Notification and Federal Em-  
4   ployee Antidiscrimination and Retaliation Act of 2002 (5  
5   U.S.C. 2301 note) is amended—

6                   (1) in paragraph (9)—

7                      (A) in subparagraph (A), by striking  
8                      “and” at the end;

9                      (B) in subparagraph (B)(ii), by striking  
10                  the period at the end and inserting “, and”;  
11                  and

12                  (C) by adding at the end the following:

13                  “(C) for each such finding counted under  
14                  subparagraph (A), the agency shall specify—

15                      “(i) the date of the finding,  
16                      “(ii) the affected agency,  
17                      “(iii) the law violated, and  
18                      “(iv) whether a decision has been  
19                  made regarding necessary disciplinary ac-  
20                  tion as a result of the finding.”; and

21                  (2) by adding at the end the following:

22                  “(11) Data regarding each class action com-  
23                  plaint filed against the agency alleging discrimina-  
24                  tion or retaliation, including—

25                      “(A) information regarding the date on  
26                  which each complaint was filed,

1                   “(B) a general summary of the allegations  
2                   alleged in the complaint,

3                         “(C) an estimate of the total number of  
4                         plaintiffs joined in the complaint if known,

5                         “(D) the current status of the complaint,  
6                         including whether the class has been certified,  
7                         and

8                         “(E) the case numbers for the civil actions  
9                         in which discrimination or retaliation has been  
10                         found.”.

**11 SEC. 6. DATA TO BE POSTED BY THE EQUAL EMPLOYMENT  
12 OPPORTUNITY COMMISSION.**

13       Section 302(b) of the Notification and Federal Em-  
14      ployee Antidiscrimination and Retaliation Act of 2002 (5  
15      U.S.C. 2301 note) is amended by striking “(10)” and in-  
16      serting “(11)”.

17 SEC. 7. NOTIFICATION AND FEDERAL EMPLOYEE ANTI-  
18 DISCRIMINATION AND RETALIATION ACT  
19 AMENDMENTS.

20       (a) NOTIFICATION REQUIREMENTS.—The Notifica-  
21 tion and Federal Employee Antidiscrimination and Retal-  
22 iation Act of 2002 (5 U.S.C. 2301 note) is amended by  
23 adding after section 206 the following:

1     **“SEC. 207. COMPLAINT TRACKING.**

2         “Not later than 1 year after the date of enactment  
3     of the Federal Employee Antidiscrimination Act of 2015,  
4     each Federal agency shall establish a system to track each  
5     complaint of discrimination arising under section  
6     2302(b)(1) of title 5, United States Code, and adjudicated  
7     through the Equal Employment Opportunity process from  
8     inception to resolution of the complaint, including whether  
9     a decision has been made regarding necessary disciplinary  
10   action as the result of a finding of discrimination.

11    **“SEC. 208. NOTATION IN PERSONNEL RECORD.**

12         “If an agency takes an adverse action covered under  
13   section 7512 of title 5, United States Code, against an  
14   employee for an act of discrimination or retaliation prohib-  
15   ited by a provision of law covered by paragraphs (1) or  
16   (2) of section 201(a), the agency shall, after all appeals  
17   relating to such action have been exhausted, include a no-  
18   tation of the adverse action and the reason for the action  
19   in the employee’s personnel record.”.

20         (b) PROCESSING AND REFERRAL.—The Notification  
21   and Federal Employee Antidiscrimination and Retaliation  
22   Act of 2002 (5 U.S.C. 2301 note) is amended by adding  
23   at the end the following:

1       **“TITLE IV—PROCESSING AND**  
2                   **REFERRAL**

3       **“SEC. 401. PROCESSING AND RESOLUTION OF COMPLAINTS.**

4               “Each Federal agency is responsible for the fair, im-  
5       partial, processing and resolution of complaints of employ-  
6       ment discrimination and retaliation arising in the Federal  
7       administrative process and shall establish a model Equal  
8       Employment Opportunity Program that—

9               “(1) is not under the control, either structurally  
10       or practically, of a Human Capital or General Coun-  
11       sel office;

12               “(2) is devoid of internal conflicts of interest  
13       and ensures fairness and inclusiveness within the or-  
14       ganization; and

15               “(3) ensures the efficient and fair resolution of  
16       complaints alleging discrimination or retaliation.

17       **“SEC. 402. NO LIMITATION ON HUMAN CAPITAL OR GEN-**  
18                   **ERAL COUNSEL ADVICE.**

19               “Nothing in this title shall prevent a Federal agency’s  
20       Human Capital or General Counsel office from providing  
21       advice or counsel to agency personnel on the processing  
22       and resolution of a complaint, including providing legal  
23       representation to an agency in any proceeding.

1   **“SEC. 403. HEAD OF PROGRAM REPORTS TO HEAD OF**  
2                   **AGENCY.**

3         “The head of each Federal agency’s Equal Employ-  
4         ment Opportunity Program shall report directly to the  
5         head of the agency.

6   **“SEC. 404. REFERRALS OF FINDINGS OF DISCRIMINATION.**

7         “(a) EEOC FINDINGS OF DISCRIMINATION.—Not  
8         later than 30 days after the Equal Employment Oppor-  
9         tunity Commission issues an appellate decision involving  
10        a finding of discrimination or retaliation within a Federal  
11        agency the Commission shall refer the matter to the Office  
12        of Special Counsel.

13         “(b) REFERRALS TO SPECIAL COUNSEL.—The Office  
14        of Special Counsel shall accept and review a referral from  
15        the Commission under subsection (a) for purposes of seek-  
16        ing disciplinary action under its authority against an Fed-  
17        eral employee who commits an act of discrimination or re-  
18        taliation.

19         “(c) NOTIFICATION.—The Office of Special Counsel  
20        shall notify the Commission in a case in which the Office  
21        of Special Counsel initiates disciplinary action.

22         “(d) SPECIAL COUNSEL APPROVAL.—An agency may  
23        not take disciplinary action against a Federal employee  
24        for an alleged act of discrimination or retaliation referred  
25        by the Commission under this section except in accordance

1 with the requirements of section 1214(f) of title 5, United  
2 States Code.”.

3 (c) CONFORMING AMENDMENTS.—The table of con-  
4 tents in section 1(b) of the Notification and Federal Em-  
5 ployee Antidiscrimination and Retaliation Act of 2002 (5  
6 U.S.C. 2301 note) is amended—

7 (1) by inserting after the item relating to sec-  
8 tion 206 the following:

“Sec. 207. Complaint tracking.

“Sec. 208. Notation in personnel record.”;

9 and

10 (2) by adding at the end the following:

“TITLE IV—PROCESSING AND REFERRAL

“Sec. 401. Processing and resolution of complaints.

“Sec. 402. No limitation on Human Capital or General Counsel advice.

“Sec. 403. Head of Program reports to head of agency.

“Sec. 404. Referrals of findings of discrimination.”.

11 **SEC. 8. NON-DISCLOSURE AGREEMENT LIMITATION.**

12 Section 2302(b) of title 5, United States Code is  
13 amended—

14 (1) in paragraph (13)—

15 (A) by inserting “or the Office of Special  
16 Counsel” after “Inspector General”;

17 (B) by striking “implement” and inserting  
18 “(A) implement”; and

19 (C) by striking the period that follows the  
20 quoted material and inserting “; or”;

1                             (2) by adding after subparagraph (A), as added  
2                             by paragraph (1)(B), and preceding the flush left  
3                             matter that follows paragraph (13), the following:

4                             “(B) implement or enforce any nondisclo-  
5                             sure policy, form, or agreement, if such policy,  
6                             form, or agreement prohibits or restricts an em-  
7                             ployee from disclosing to Congress, the Office of  
8                             Special Counsel, or an Office of the Inspector  
9                             General any information that relates to any vio-  
10                             lation of any law, rule, or regulation, or mis-  
11                             management, a gross waste of funds, an abuse  
12                             of authority, or a substantial, and specific dan-  
13                             ger to public health or safety, or any other  
14                             whistleblower protection.”.

